



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REGINALD VAL DAVIN,)	NO. CV 08-2877-RSWL (E)
)	
Petitioner,)	
)	ORDER ADOPTING FINDINGS,
v.)	
)	CONCLUSIONS AND RECOMMENDATIONS
SHERIFF LEE BACA,)	
)	OF UNITED STATES MAGISTRATE JUDGE
Respondent.)	
)	
)	

Pursuant to 28 U.S.C. § 636, the Court has reviewed the
 Petition, all of the records herein and the attached Report and
 Recommendation of United States Magistrate Judge. The Court approves
 and adopts the Magistrate Judge's Report and Recommendation.

IT IS ORDERED that Judgment be entered denying and dismissing
 the Petition with prejudice.

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1 IT IS FURTHER ORDERED that the Clerk serve copies of this
2 Order, the Magistrate Judge's Report and Recommendation and the
3 Judgment herein by United States mail on Petitioner and counsel for
4 Respondent.

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6 LET JUDGMENT BE ENTERED ACCORDINGLY.

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8 DATED: August 4, 2008. *R*
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10 RONALD S.W. LEW

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12 RONALD S. W. LEW
13 SENIOR UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

This Report and Recommendation is submitted to the Honorable Ronald S. W. Lew, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

Petitioner filed a "Petition for Writ of Habeas Corpus By a Person in State Custody" on May 2, 2008. It plainly appears from the face of the Petition that Petitioner is not entitled to federal habeas relief on the claims alleged in the Petition. Consequently, the

1 Petition should be denied and dismissed with prejudice. See Rule 4 of
2 the Rules Governing Section 2254 Cases in the United States District
3 Courts.

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5 **BACKGROUND**
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7 The Petition alleges that, pursuant to a guilty plea, the
8 Torrance Superior Court convicted Petitioner on March 7, 2008 and
9 sentenced him on April 21, 2008 (Petition at 1). The Petition seeks
10 to challenge the legality of this conviction and/or sentence by
11 asserting that the evidence presented at the preliminary hearing was
12 insufficient. The Petition also argues other alleged errors in
13 connection with the preliminary hearing.

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15 **DISCUSSION**
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17 Federal habeas corpus relief may be granted "only on the ground
18 that [Petitioner] is in custody in violation of the Constitution or
19 laws or treaties of the United States." 28 U.S.C. § 2254(a). Mere
20 errors in the application of state law are not cognizable on federal
21 habeas review. Id.; Estelle v. McGuire, 502 U.S. 62, 67-68 (1991)
22 ("it is not the province of a federal habeas court to reexamine state-
23 court determinations on state-law questions"); accord Pulley v.
24 Harris, 465 U.S. 37, 41 (1984).

25
26 The Petition fails to state a claim cognizable on federal
27 habeas review. Although many states employ preliminary hearings to
28 evaluate probable cause, it is "well settled" "that there is no

1 fundamental right to a preliminary hearing." Howard v. Cupp, 747 F.2d
2 510, 510 (9th Cir. 1984), cert. denied, 471 U.S. 1021 (1985). Thus,
3 even the deprivation of a preliminary hearing would not require the
4 vacating of a subsequent conviction. See Gerstein v. Pugh, 420 U.S.
5 103, 119 (1975) ("a conviction will not be vacated on the ground that
6 the defendant was detained pending trial without a determination of
7 probable cause"); United States v. Studley, 783 F.2d 934, 937 (9th
8 Cir. 1986) (conviction affirmed despite violation of statutory
9 probable cause requirement). Accordingly, any alleged evidentiary
10 insufficiency at a preliminary hearing, or other alleged errors
11 occurring in relation to a preliminary hearing, cannot provide a basis
12 for habeas relief with respect to a subsequent conviction or sentence.
13 See, e.g., Colbert v. Yates, 2008 WL 942842, *5 (C.D. Cal. Apr. 4,
14 2008) (claimed inability to cross-examine a witness at the preliminary
15 hearing fails to state a claim cognizable on federal habeas corpus);
16 Hill v. Wolfenbarger, 2005 WL 3693204, *4 (E.D. Mich. Nov. 22, 2005)
17 (claim of insufficiency of the evidence at a preliminary examination
18 "raises a matter of state law and cannot form a basis for federal
19 habeas corpus relief"); Fowler v. Leeke, 509 F. Supp. 544, 548 (D.S.C.
20 Sept. 14, 1979) ("the claim that petitioner did not receive a
21 preliminary hearing is not a federal issue").

22
23 Moreover, even if the Petition's allegations somehow stated a
24 federal claim regarding Petitioner's pre-plea proceedings,
25 Petitioner's guilty plea waived any such claim. See Tollett v.
26 Henderson, 411 U.S. 258, 267 (1973); see also Lefkowitz v. Newsome,
27 420 U.S. 283, 288 (1975) (guilty plea generally "bars the later
28 assertion of constitutional challenges to the pretrial proceedings");

1 United States v. Cazares, 121 F.3d 1241, 1246-48 (9th Cir. 1997)
2 (guilty plea admits all facts essential to the validity of the
3 conviction).

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5 **RECOMMENDATION**
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7 For all of the foregoing reasons, IT IS RECOMMENDED that the
8 Court issue an Order: (1) approving and adopting this Report
9 and Recommendation; and (2) directing that Judgment be entered denying
10 and dismissing the Petition with prejudice.

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12 DATED: May 7, 2008.

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14 _____/s/
15 CHARLES F. EICK
16 UNITED STATES MAGISTRATE JUDGE
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1 **NOTICE**

2 Reports and Recommendations are not appealable to the Court of
3 Appeals, but may be subject to the right of any party to file
4 objections as provided in the Local Rules Governing the Duties of
5 Magistrate Judges and review by the District Judge whose initials
6 appear in the docket number. No notice of appeal pursuant to the
7 Federal Rules of Appellate Procedure should be filed until entry of
8 the judgment of the District Court.